

REG CC Response

Identification of an Ineligible Item under Check 21 Law

Under revisions to 229.34(c), the FRB is suggesting that additional warranties be put in place for the exchange of Remotely Created Checks(RCC) even when the original item did not conform to the definition of a check, in that, it may never have been a paper item. The Check 21 law specifically prohibits the creation of a Substitute Check when the original item was not a paper check. Check 21 Law does **not** appear to prohibit exchange of such items as long as they are not converted to a Substitute Check. So adding the additional warranties for the exchange process seems reasonable. However, currently, there is nothing in the current exchange process to identify an item that was never a paper item. By adding a field with this information in the exchange standard X9.100-187, any bank creating a Substitute Check will have the necessary information to properly follow Check 21 Law and it will also have the needed additional warranties. This does not imply that the "never been a paper check" field will be properly filled in. However the additional warranties could imply that the risk for creating a Substitute Check is placed on the truncating bank and not the creator bank because it would be the truncating bank that failed to provide the necessary information.

There is another issue with RCC items. If the RCC was not originally a paper item, it is ineligible under Check 21 law. It is suggested that it is technically feasible to detect with high accuracy that an image was generated and not scanned from an original item. However, if the ineligible item is converted to a Substitute Check, the basic information needed to detect it as an ineligible item will be lost and the consumer will have lost a basic protection of the Check 21 Law. In essence, the process of creating a Substitute Check may convert an ineligible item to an eligible item and the information needed to determine this transition will be lost. Hence it is suggested that the Image Cash Letter used to create a Substitute Check be archived for a period of time consistent with associated review periods.